

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:21-cv-00052-MR-WCM

CHRISTOPHER HUNTER,

Plaintiff,

v.

BUNCOMBE COUNTY,
JACK VAN DUNCAN,
SHERIFF QUENTIN MILLER

Defendants.

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ORDER

This matter is before the Court on Defendant Buncombe County's Motion to Dismiss (the "Motion to Dismiss," Doc. 3).

The Motion to Dismiss, which seeks the dismissal of Plaintiff's state law claims against Buncombe County pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, was filed on March 1, 2021. Doc. 3. Twenty-one (21) days later, on March 22, 2021, Plaintiff filed an Amended Complaint. Doc. 6.

"A party may amend its pleading once as a matter of course within ... 21 days after service of a motion under Rule 12(b)...." Fed. R. Civ. Pro. 15(a)(1)(B). Because Plaintiff has amended his complaint within the time period provided by Rule 15(a)(1)(B), the Motion to Dismiss is now moot. See Thomas v.

Cumberland County Board of Education, No. 5:10-cv-552, 2011 WL 3664891, at *1 (E.D.N.C. Aug. 18, 2011) (“Because plaintiff had ‘an absolute right to amend [her] complaint ... and need not [have sought] leave of court to do so’ her motion to amend must be ALLOWED. Defendant’s motion to dismiss the original complaint is DENIED AS MOOT, without prejudice to renewal.”) (quoting Galustian v. Peter, 591 F.3d 724, 730 (4th Cir. 2010) (modifications in Thomas)).

IT IS THEREFORE ORDERED that Defendant Buncombe County’s Motions to Dismiss (Doc. 3) is **DENIED AS MOOT**.

March 23, 2021



W. Carleton Metcalf
United States Magistrate Judge

